Supreme Court, U.S.
FILED
FEB 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-966

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

MARIBETH SWEENEY and SUSAN SWEENEY,

Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

REPLY TO STATE'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT

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REPLY TO JURISDICTIONAL STATEMENT

We are compelled to reply to Illinois' jurisdictional statement in its Brief in Opposition to the Petitioners' Petition for Writ of Certiorari because it is dishonest and misleading. The State claims that this Honorable Court lacks jurisdiction because the arguments raised in our certiorari petition "were never made in the Illinois courts". State's Brief, at 2. This claim is false. After the Illinois Appellate Court rendered the decision adverse to the petitioners ab-

sent the filing of any brief on their behalf, the petitioners obtained new counsel who filed, in the Illinois Appellate Court, a motion seeking remand and a petition for rehearing.[1] After the appellate court denied the motion seeking remand and the petition for rehearing, we filed a petition for leave to appeal in the Illinois Supreme Court and a motion requesting reconsideration of the denial of the petition for leave to appeal or vacation of the appellate court's decision. All of the issues raised in the certiorari petition were set forth among these filings and were plainly premised upon the federal constitution. The motion seeking remand—filed concomitantly with the petition for rehearing—noted that the petitioners had been deprived of the right to a speedy appeal by virtue of the fact that it took the State approximately two years to file a brief in the post-conviction appeal and effective assistance of counsel by their former counsel's failure to file a brief in the direct appeal and in the State's appeal of the order granting post-conviction relief. The Petition for Leave to Appeal in the Illinois Supreme Court, expressly raised the following points:

I. THE APPELLATE COURT ABUSED ITS DISCRETION AND DENIED THE SWEENEYS DUE PROCESS BY REVERSING AN ORDER GRANTING THEM POST-CONVICTION RELIEF ABSENT THE FILING OF AN APPELLATE BRIEF ON THEIR BEHALF.

II. BECAUSE THE SWEENEYS' COUNSEL FAILED TO FILE A BRIEF, THE DECISION OF THE APPELLATE COURT IS TAINTED BY INEFFECTIVE ASSISTANCE OF COUNSEL.

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[1] Illinois' characterizing the petition for rehearing as a "brief" is also misleading. The petition for rehearing did not purport to be a brief on the merits and was not presented *before* the rendering of a decision depriving the petitioners of liberty.

III. THE APPELLATE COURT ERRED IN FINDING THAT POST-CONVICTION RELIEF HAD BEEN IMPROPERLY GRANTED WHERE THE TRIAL JUDGE EXPRESSLY FOUND THAT HE HAD RENDERED AN UNFAIR TRIAL AND THAT STATEMENT FINDS SUPPORT IN THE RECORD.

Further, in the motion requesting the Illinois Supreme Court's reconsideration of the denial of leave to appeal, the petitioners, relying upon the recent case of *United States ex rel. Thomas v. O'Leary*, 856 F.2d 1011 (7th Cir. 1988), which held that a habeas corpus petitioner had been deprived of effective assistance of counsel where his counsel failed to file a brief in a State-initiated appeal, again pressed the ineffective assistance of counsel and due process claims. Illinois states that review by this Court is limited to "federal questions presented to the highest court of a state having jurisdiction". State's Brief, at 3. As can be seen, Issue ## I, II and IV in the petition for certiorari were undoubtedly presented to the highest court in Illinois. Thus, the State's claim that we have never raised the issues set forth in the certiorari petition in the Illinois' courts utterly and wholly lacks merit. This Court plainly has jurisdiction and certiorari should be granted for the reasons set forth in our petition.

Respectfully submitted,

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